

State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866

July 13, 2004

Dear Water User:

Notice is hereby given, that pursuant to law, a special meeting of the water users of Water District 34, Big Lost River and Tributaries, is scheduled as follows:

The meeting will be held on: **August 2, 2004 at 2:00 P.M.**

Meeting place: **Mackay High School Auditorium
Mackay, ID**

This special meeting is being scheduled upon the written request of the watermaster of Water District 34 in accordance with Section 42-605(11), Idaho Code. The watermaster has requested a special meeting so that water users can vote on the issue of whether Water District 34 should provide mitigation water to several holders of senior water rights from the Big Lost River who made a request for mitigation at the start of the irrigation season pursuant to Rule 50 of the Idaho Department of Water Resources Water Distribution Rules - Water District 34 (IDAPA 37.03.12.050).

Karl J. Dreher, Director
Idaho Department of Water Resources



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DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

July 12, 2004

**Re: Mitigation for/Curtailment of Diversion of Ground Water Rights with Priority Dates
Junior to July 30, 1883, Located in Water District 34, Big Lost River**

Dear Water Right Holder:

The records of the Idaho Department of Water Resources ("IDWR") and Water District No. 34 indicate that you are the holder of one or more consumptive ground water rights with a priority date that is junior to June 30, 1883. On May 13, 2004, the Director of IDWR notified you that you were required to provide mitigation to senior priority ground water right holders in Water District No. 34 according to the Water Distribution Rules – Water District 34. The notice stated that an acceptable mitigation plan had to be submitted to IDWR prior to June 4, 2004. An acceptable plan was not submitted.

Enclosed is an order requiring that you provide mitigation on or before July 22, 2004 or cease and desist diversion of ground water under your ground water right. The order also directs the watermaster of Water District No. 34 to prevent the diversion of ground water from wells described as points of diversion by junior priority ground water rights. This order affects consumptive ground water rights bearing priority dates junior to June 30, 1883 for irrigation, commercial, industrial, municipal and other uses, including the irrigation of non-agricultural lands in excess of one-half acre. Small domestic and stockwater uses satisfying the criteria of Idaho Code § 42-111 and Idaho Code § 42-1401A(11) are not required to mitigate or cease and desist.

The above referenced order was issued in response to a call for delivery of water rights held by Jay V. Jensen, Jack A. Jensen, and L. Vaughn Jensen ("Jensens"). Jensens own water rights describing the Big Lost River as a source and bearing priority dates of June 1 and June 30, 1883. The Director of IDWR determined that the Water Distribution Rules – Water District 34 and the Snake River Basin Adjudication established that ground water in the Big Lost River Basin must be administered conjunctively with the flows of the Big Lost River and its tributaries. The Director also determined that previous studies establishing a hydraulic relationship were incorporated into the Water Distribution Rules – Basin 34 and that the water distribution rules establish that pumping by junior ground water right holders establishes material injury to surface water users. Finally, the Director determined that the water distribution rules adopted a mitigation plan as described in the Rules for Conjunctive Management of Surface and Ground Water Resources, and that the water right holders of junior priority water rights must adhere to the provisions of the plan or have their diversions of water curtailed.

Water District No. 34 Water Right Holder
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Holders of consumptive ground water rights in Water District No. 34 that are junior in priority to June 30, 1883 must add 6,110 acre feet of water to the flow of the Big Lost River to make up, or mitigate, for depletions to the Big Lost River caused by their ground water diversions. Alternative mitigation plans can also be submitted by Water District No. 34 or by individual water users. A conceptual plan submitted by the Advisory Committee of Water District No. 34. Any mitigation plan must be approved by IDWR and operational on or before July 22, 2004.

Unless you are a participant in a mitigation plan implemented by a larger group or unless you have sought and implemented a mitigation plan approved by IDWR, on July 23, 2004, you must cease and desist diverting water from your well described as a point of diversion by your junior priority water right. The water master of water district 34 will insure that you cannot divert water during the 2004 irrigation season until a mitigation plan is in place.

If you have questions concerning the order and this correspondence, please contact the Water District No.34 office, the IDWR Eastern Regional office in Idaho Falls at 208-525-7161, or contact the IDWR state office at 208-327-7900.

Sincerely,



Gary Spackman
Water Allocations Bureau Chief

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the issuance of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) the petition for reconsideration is disposed of; or
 - (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days a) of the service date of the final order, b) of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.